

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

February 16, 2022

Schannette Grant
Interim Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W., Ste. 11
Washington, D.C. 20004

Re: Guidance Concerning Commissioner Endorsements

Director Grant:

You asked us to supply general guidance on whether, and to what extent, an Advisory Neighborhood Commissioner may endorse a candidate for office. This letter supplies that guidance.

A Commissioner who wants to endorse a candidate for public office needs to be mindful of three different kinds of limits: limits from the ANC Act, limits from the District’s campaign finance law, and limits from the District’s ethics law.

The ANC Act – the Advisory Neighborhood Commissions Act of 1975¹ – does not speak directly to endorsing candidates for office, but it does put important guardrails on the use of ANC funds for that purpose. ANC funds must be used either “for public purposes within the Commission area or for the functioning of the Commission office”;² they cannot be used for “partisan political activity.”³ Nor, more generally, can they be used for any purpose that the ANC has not approved.⁴ Accordingly, a Commissioner cannot use ANC funds to support or oppose a candidate for partisan political office, or use ANC funds for any endorsement that the ANC has not otherwise approved.

Even if an endorsement would be consistent with the ANC Act, a Commissioner must make sure it is also consistent with the District’s campaign finance and ethics laws. In 2011, the Council consolidated these two different areas of law into one statute: the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act

¹ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

² D.C. Official Code § 1-309.13(1)(1).

³ *Id.* § 1-309.13(1)(2).

⁴ *See id.* § 1-309.13(f)(1).

of 2011 (“BEGA Act”).⁵ The campaign finance part of the statute is enforced by the Director of Campaign Finance.⁶ The ethics part of the statute, including the Code of Conduct it sets out,⁷ is enforced by the Board of Ethics and Government Accountability (“BEGA”).⁸

On the campaign finance side, section 336 of the BEGA Act (D.C. Official Code § 1-1163.36) says that “no resources of the District of Columbia government” may be “used to support or oppose any candidate for public office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure.”⁹ The phrase “resources of the District of Columbia government” is broad; it includes “the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, and telephones and other utilities.”¹⁰ This language means that a Commissioner cannot use any kind of ANC resources, including the personal services of ANC employees, to support someone for public office.

On the ethics side, several restrictions apply. As we recently advised,¹¹ each Commissioner must abide by the ethics provisions of the BEGA Act, which includes abiding by the Code of Conduct.¹² Most of the relevant ethical limits on endorsements flow from the District Personnel Manual (“DPM”),¹³ which is part of the Code of Conduct and governs a wide range of matters including financial disclosures and conflicts of interest.¹⁴

At least two important limits on endorsements flow from the DPM. First, a Commissioner who wants to endorse someone cannot take advantage of their title to do it. Commissioners cannot “use [their] public office or position for private gain.”¹⁵ Nor may a Commissioner engage in any “outside employment, private business activity, or interest” that would permit the Commissioner, or others, to “capitalize on [the Commissioner’s] official title or position.”¹⁶ Second, as some of the other prohibitions already discussed indicate, a Commissioner cannot independently use

⁵ Effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*).

⁶ See D.C. Official Code § 1-1163.03

⁷ See *id.* § 1-1161.01(7) (listing the parts of District law that make up the Code of Conduct).

⁸ See Letter to Comm’rs Costello and Piekara, *supra*, at 1-2.

⁹ D.C. Official Code § 1-1163.36(a).

¹⁰ *Id.* This language dovetails with the statement in the ANC Act that “[a]ny document created by requirement” of the ANC Act, “and any equipment purchased by, or on behalf of, a Commission, is the property of the District, and not the property of any Commissioner or other individual.” *Id.* § 1-309.13(r).

¹¹ See Letter to Comm’rs Costello and Piekara, February 2, 2022, available at <https://oag.dc.gov/sites/default/files/2022-02/ANC-5B-Letter-to-Commissioners-Costello-and-Piekara-re-Conflicts-of%20Interest-.pdf> (all internet sites last visited Feb. 15, 2022).

¹² See D.C. Official Code § 1-1162.01a (the BEGA Act and the Code of Conduct apply to “all employees and public officials serving . . . Advisory Neighborhood Commissions”).

¹³ See *id.* § 1-1161.01(7)(E) (the DPM – Title 6, Subtitle B, Chapter 18 of the District of Columbia Municipal Regulations – is part of the Code of Conduct and applies to all “employees and public officials who are not members or employees of the Council”). It thus applies to Commissioners since they are public officials. *Id.* § 1-1161.01(47)(E).

¹⁴ See 6-B DCMR §§ 1805 (financial interests and disclosures) and 1807 (restrictions on outside employment and conflicts of interest).

¹⁵ *Id.* § 1800.3(g).

¹⁶ *Id.* § 1807.1(e).

government resources to endorse someone for public office. Commissioners cannot use government time and resources “for other than official business, or government approved or sponsored activities.”¹⁷ They also cannot order or encourage ANC employees to “perform during regular working hours any personal services not related to official District government functions and activities.”¹⁸

Any Commissioner who has questions about whether a proposed endorsement would run afoul of the ANC Act should feel free to reach out to our Office. Questions about whether an endorsement would run afoul of the campaign finance restrictions quoted in this letter should be directed to the Director of Campaign Finance. Questions about the ethics restrictions we discuss should be directed to BEGA.¹⁹

Sincerely,

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(AL-22-175)

¹⁷ *Id.* § 1807.1(b).

¹⁸ *Id.* § 1807.1(c). This list is not exhaustive; other ethical requirements – such as the requirement that Commissioners perform their duties impartially (6-B DCMR § 1800.3(h)) – may apply depending on the circumstances.

¹⁹ See <https://bega.dc.gov/service/ethics-advice> (guidance on seeking ethics advice from BEGA); <https://bega.dc.gov/publications?type=1481> (collection of BEGA advisory opinions).